Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Connect America Fund	)	WC Docket No. 10-90
	)	
A National Broadband Plan for Our Future	)	GN Docket No. 09-51
	)	
Establishing Just and Reasonable Rates for	)	WC Docket No. 07-135
Local Exchange Carriers	)	
	)	
High-Cost Universal Service Support	)	WC Docket No. 05-337
	)	
Developing a Unified Intercarrier	)	CC Docket No. 01-92
Compensation Regime	)	
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	
Lifeline and Link-Up	)	WC Docket No. 03-109

COMMENTS OF COMCAST CORPORATION

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Executive Summary

Comcast fully supports the Commission's renewed effort to undertake comprehensive reform of the current regimes governing intercarrier compensation ("ICC") and the high-cost universal service fund ("USF"). Some of the proposals that have been advanced by interested parties, however, are neither competitively nor technologically neutral. In particular, certain aspects of several reform plans appear designed to favor incumbent local exchange carriers ("LECs") and to raise the costs of competing service providers. Comcast urges the Commission to ensure that the changes it adopts to the existing ICC and USF policies are consistent with the fundamental public policy principles it announced earlier this year: (1) expanding the reach of broadband service to all consumers and accelerating the conversion to Internet Protocol ("IP") networks; (2) acting with fiscal responsibility; (3) insisting on accountability from companies that receive support; and (4) promoting market-driven, incentive-based policies that will use scarce resources efficiently to deliver the advanced services that consumers want.

The proposals advanced by the incumbent LECs largely ignore the Commission's cornerstone policy objectives. These proposals, for example, do not promote efficiency-enhancing changes that would reduce pressure on the fund. Moreover, absent clarification, the ABC Plan could impose higher interconnection costs on competitive LECs. The incumbent LECs' principal concern with respect to USF reform appears to be maintaining their current revenue streams, rather than bringing long-needed fiscal responsibility and accountability to high-cost support. In addition, certain aspects of the incumbent LEC proposals treat incumbent LECs more favorably than their wireline and wireless competitors, such as by earmarking high-cost support for rate-of-return carriers. The Commission must address and correct these shortcomings in the incumbent LEC proposals. The Commission also should look for opportunities to create affirmative incentives for facilities-based providers to move to IP technology.

The Commission's effort to develop and implement a comprehensive plan for the reform of intercarrier compensation and universal service support presents an historic opportunity to serve the interests of American consumers by reducing the costs of the current system and promoting the deployment of innovative services. Maximizing the benefits of reform for consumers should be the Commission's principal concern.

Intercarrier Compensation Reform

The Commission's paramount objective should be to bring certainty and stability to a system that to date has been characterized by widespread confusion and disputes about the appropriate treatment of terminating traffic, particularly in circumstances where a VoIP provider has partnered with a competitive LEC. These controversies serve no public policy interest and divert scarce resources away from investment in innovative broadband technologies and services that benefit consumers. Accordingly, in order to put an end to such uncertainty and disputes on a going forward basis, the Commission should:

- ***Make clear that an originating voice provider is obligated to pay the rate specified by the Commission during and after the transitional period for the termination of its traffic, regardless of the technology of the terminating network and regardless of whether the traffic is ultimately delivered to the called location by the entity assessing the termination charge.***

- ***Specify that the rules adopted in this proceeding regarding VoIP traffic are prospective only and shall have no impact on arrangements in effect prior to the effective date of the new rules.***

- ***Include tandem switching and local transport rates in the transition.***

- ***Make clear that the changes in intercarrier compensation adopted in this proceeding have no effect on the rates for or regulatory treatment of the incumbent LECs' provision of tandem transit service.*** Comcast and other competitive voice providers rely heavily on tandem transit service provided through tandem switches operated by incumbent LECs to deliver their voice traffic to smaller incumbent LECs, competitive LECs, and wireless service providers. The incumbent LEC plans do not address the treatment of such transit services post-transition and, consequently, raise the prospect that they may seek to raise the rates for those services after they have lowered the rates for tandem switched traffic delivered to their own end offices.

- ***Establish a shorter transition period for replacing the current ICC/USF regime with a more stable, predictable, and economically efficient system.*** There is a virtual consensus in the record of the proceeding that the current ICC/USF system is irretrievably broken and continues to encourage uneconomic practices, such as traffic pumping. The ABC Plan, however, recommends a transition period of five years before a unitary, more economically efficient rate takes effect, and the rate-of-return carriers propose an even longer transition. Comcast believes that the interests of consumers who bear the costs of the anomalies fostered by the existing regime are best served by replacing that scheme as expeditiously as possible.

Universal Service Fund Reform

Comcast supports the Commission's efforts to shift federal subsidies from narrowband to broadband services. However, in order to complete this transition in a manner that serves the interests of consumers, the Commission should:

- ***Cap the size of the high-cost fund at the 2010 level.*** The fundamental flaw in the USF plans proposed by the incumbent LECs is that they impose no firm, enforceable limit on the size of the high-cost fund. Consequently, the changes they support could lead to an increase in the size of the fund or an open-ended delay in reaching the end of the ICC transition period. Either outcome would not serve the interests of consumers who would bear a higher economic burden and would be flatly inconsistent with the Commission's goal of "fiscal responsibility." All recipients from the fund, price cap as well as rate-of-return carriers, need to be subject to a firm constraint. Recipients from the fund should focus their energies on improving the efficiency of their operations rather than promoting growth in the fund.

- ***Take other steps to reduce the size of the fund.*** In addition, although Comcast fully supports the proposal to end subsidies in areas where there is a competing unsubsidized voice provider, the Commission also should take additional measures such as ensuring that broadband support is used only in areas where marketplace incentives will not lead to deployment.

- ***Use a reverse auction to allocate support.*** The record in this proceeding shows that a properly designed reverse auction is the most economically efficient, technologically and competitively neutral method of allocating support for unserved areas. The "right of first refusal" approach proposed by the incumbent LECs would produce exactly the opposite result, to the detriment of consumers who underwrite the costs of the high-cost fund.

- ***Employ a cost model in conjunction with the reverse auction process.*** If a reverse auction method is selected, a well-designed cost model would provide a useful adjunct in identifying areas where support is needed and establishing a "reserve price."

- ***Impose build-out milestones.*** Comcast supports the use of build-out milestones to ensure that recipients of support fulfill their obligation to bring broadband service to consumers in high-cost areas.

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COMMENTS OF COMCAST CORPORATION

Comcast Corporation ("Comcast") and its affiliates hereby submit these comments in response to the Public Notice released by the Federal Communications Commission ("FCC" or "Commission") in the above-captioned proceeding.[1] The Public Notice seeks additional information on certain matters raised in the ongoing universal service and intercarrier compensation reform proceeding.[2]

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1 *Further Inquiry Into Certain Issues in the Universal Service-Intercarrier Compensation Transformation Proceeding*, Public Notice, DA 11-1348 (rel. Aug. 3, 2011), as amended by Erratum (rel. Aug. 8, 2011) ("Public Notice").

2 *Connect America Fund; A National Broadband Plan for Our Future; Establishing Just and Reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support; Developing a Unified Intercarrier Compensation Regime; Federal-State Joint Board on*

I. INTRODUCTION

In undertaking much-needed universal service and intercarrier compensation ("ICC") reform, the Commission established four primary principles: (1) modernizing the universal service fund ("USF" or "Fund") and ICC regimes "to make affordable broadband available to all Americans and accelerate the transition from circuit switched to IP networks"; (2) acting with fiscal responsibility and recognizing that "American consumers and businesses ultimately pay for USF"; (3) requiring accountability from companies receiving support; and (4) transitioning to "market-driven and incentive-based policies that encourage technologies and services that maximize the value of scarce program resources and the benefits to all consumers."[3] Comcast strongly supports the Commission's emphasis on these key objectives and has reviewed the State Members Plan,[4] the RLEC Plan,[5] and the ABC Plan[6] with the FCC's four fundamental principles in mind.

Simply stated, the plans submitted by the incumbent local exchange carriers ("LECs") appear to be fundamentally inconsistent with the Commission's guiding principles. With respect to ICC reform, their proposals, for example, do not promote efficiency-enhancing changes that

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Universal Service; Lifeline and Link-Up, Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, 26 FCC Rcd 4554 (2011) ("*NPRM*").

3 *NPRM* ¶ 10.

4 Comments of the State Members of the Federal State Joint Board on Universal Service, WC Docket No. 10-90 (May 2, 2011) ("State Members Plan").

5 Comments of NECA, NTCA, OPASTCO, and WTA, WC Docket No. 10-90 (Apr. 18, 2011) ("RLEC Plan").

6 *Framework of the Proposal*, Attachment 1 to Letter from Robert W. Quinn, Jr., AT&T, Steve Davis, CenturyLink, Michael T. Skrivan, FairPoint, Kathleen Q. Abernathy, Frontier, Kathleen Grillo, Verizon, and Michael D. Rhoda, Windstream, to Marlene H. Dortch, FCC Secretary, WC Docket No. 10-90 (July 29, 2011) ("ABC Plan").

would reduce pressure on the Fund. Moreover, absent clarification, the ABC Plan could impose higher interconnection costs on competitive LECs. With respect to USF reform, the incumbent LECs' principal concern appears to be maintaining their current revenue streams, rather than imposing fiscal responsibility and accountability on high-cost support programs. In addition, certain aspects of the incumbent LEC USF proposals appear to be biased to the detriment of competitive LECs and wireless providers.

Comcast discusses below certain critical modifications to the proposed plans that are essential to ensure that these proposals more fully comport with the Commission's goals. With respect to ICC reform, Comcast believes that the Commission's overriding objective should be to eliminate on a going-forward basis the uncertainty and confusion regarding the appropriate rate for terminating traffic that have plagued the industry, particularly in circumstances where a Voice over Internet Protocol ("VoIP") provider has partnered with a competitive LEC to offer retail voice service. To that end, the Commission should make it unambiguously clear that an originating voice provider is obligated to pay the rate specified by the Commission during and after the transitional period for the termination of its originating traffic, regardless of the technology of the terminating network and regardless of whether the traffic is ultimately delivered to the called location by the entity assessing the termination charge.

In addition, the Commission should eliminate uncertainty concerning the treatment of tandem transit services during and after the transition either by making clear that the provision of those services falls within section 251(c)(2) of the Communications Act of 1934, as amended (the "Act"), or by clarifying that the reforms in this proceeding have no effect on the current regulatory treatment of such transit services. Further, Comcast favors strict limits on the extent to which an incumbent LEC during the transition may receive subsidies from a national fund to offset a decline in its ICC revenues and the implementation of a faster transition to a low, uniform termination charge than the RLEC and ABC Plans propose.

Moving per-minute terminating rates to uniform, more economically efficient levels is a key step in eliminating aspects of the current ICC regime that encourage carriers to maintain their legacy circuit-switched networks. The Commission, however, should also look for opportunities to create affirmative incentives for facilities-based providers to move to an IP-based technology. IP networks are more efficient, reliable, and recoverable than their circuit-switched counterparts, and in an IP-based environment, the need for costly legacy regulations would be greatly diminished. But, many aspects of the current system – beyond ICC termination charges and USF support – create preferences for the legacy networks at the expense of newer voice competitors. For example, as a result of legacy interconnection rules and the need to convert IP traffic to and from Time-Division Multiplexing ("TDM"), Comcast and other VoIP providers annually incur substantial costs that could and should go to investment in IP infrastructure and applications by all players, rather than propping up the legacy network. Creating incentives for network operators to upgrade their facilities would also advance the FCC's goal of accelerating the transition from circuit-switched to IP networks.

With respect to USF reform, Comcast urges the Commission to, *inter alia*, promote its commitment to fiscal responsibility by capping the size of the Fund. In addition, Comcast favors allocating support using the market-driven reverse auction process (perhaps in combination with a cost model) and the use of build-out milestones to ensure accountability for companies that receive USF support.

By implementing these modifications, comprehensive reform of the current intercarrier compensation and universal service system can and will produce a stable, predictable regime that provides substantial benefits to consumers. In turn, competition in the voice marketplace will force providers to flow through the benefits of the new scheme in the form of lower prices and higher quality, innovative services in the manner that consumers desire.

II. INTERCARRIER COMPENSATION REFORMS

Comprehensive reform of intercarrier compensation is imperative, as technological developments in the telecommunications sector have placed tremendous strain on the existing compensation system. Although any comprehensive plan for addressing intercarrier compensation will inevitably involve tradeoffs among industry segments, the Commission should focus on adopting measures that comply with its overarching reform principles.

A. The Commission Should Eliminate Uncertainty During and After the Transition Period by Making Clear that the Rates Specified by the Commission Must Be Paid for the Termination of Both TDM as Well as VoIP Traffic

Many facilities-based VoIP providers today have partnered with competitive LECs in order, among other things, to exchange traffic in TDM with incumbent LECs and other carriers. Indeed, the Commission has acknowledged that such partnerships are often necessary in order to comply with FCC requirements, such as E911 obligations applicable to interconnected VoIP providers.[7] The partnering competitive LEC may be affiliated with the VoIP provider or it may be an independent entity furnishing a wholesale service to the VoIP provider.

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7 *See*, *e.g.*, *IP-Enabled Services; E911 Requirements for IP-Enabled Service Providers*, First Report and Order and Notice of Proposed Rulemaking, 20 FCC Rcd 10245, ¶ 38 (2005) (interconnected VoIP providers may satisfy E911 requirements "by interconnecting indirectly through a third party such as a competitive LEC"); *id.* ¶ 52 ("we have explained that interconnected VoIP providers often enlist a competitive LEC partner in order to obtain interconnection to the Wireline E911 Network, and we believe that as a result of this Order, many more will do so"); *Time Warner Cable Request for Declaratory Ruling that Competitive Local Exchange Carriers May Obtain Interconnection Under Section 251 of the Communications Act of 1934, as Amended, to Provide Wholesale Telecommunications Services*

These partnership arrangements typically authorize the competitive LEC to collect from the originating TDM carrier the access or reciprocal compensation charge that applies to the terminating voice traffic. Disputes have arisen in the past, however, over a competitive LEC's right to assess such fees.[8] One of the principal objectives of the Commission's efforts to reform the existing ICC regime is to eliminate the uncertainty, controversies, and litigation concerning terminating charges that have beset the industry, especially in recent years.[9] As the *NPRM* emphasizes, these problems are thwarting the ability of providers to "direct capital resources toward broadband investment" and to introduce "new IP-based products and services."[10]

The Commission can and should eliminate these problems in the revamped ICC scheme by making clear that the competitive LEC entity, whether or not affiliated with the VoIP provider, may collect from the originating TDM carrier the applicable charge for transporting

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to VoIP Providers, Memorandum Opinion and Order, 22 FCC Rcd 3513, ¶ 13 (WCB 2007) ("*Time Warner Order*") ("the Commission expressly contemplated that VoIP providers would obtain access to and interconnection with the PSTN through competitive carriers").

8 *See, e.g.,* Comments of Bright House Networks, WC Docket 10-90, at 7 (Apr. 1, 2011) ("As with any regulatory arbitrageur, the practical marketplace result of Verizon's newly-discovered approach to interconnected VoIP – that PSTN traffic is immune from any and all access charges simply because one of the end points of the call is a VoIP subscriber – is [an] enormous and unfair financial and competitive advantage to Verizon.").

9 *See*, *e.g.*, *NPRM* ¶ 39 ("By reducing inefficient use of resources and expenditures on disputes and litigation, we believe these [ICC] proposals will allow companies to begin directing increased capital resources toward investment and innovation that ultimately benefits consumers."); *id*. ¶ 493 (ICC reforms will give providers "increased certainty and predictability regarding future revenues and reduced billing disputes and litigation, enabling companies to direct capital resources toward broadband investment."); *id.* ¶ 507 ("One of the many benefits of intercarrier compensation reform would be to allow the industry to devote resources currently committed to arbitrage-related disputes and litigation to capital investment and other more productive uses. Moreover, regulatory uncertainty about whether or what intercarrier compensation payments are required for VoIP traffic is hindering investment in and the introduction of new IP-based products and services.").

10 *NPRM* ¶¶ 493, 507.

and terminating voice traffic to the end user's location.[11] One concern raised by the ABC Plan, for example, is that it refers to "end offices," a term that typically is used to describe TDM-based switches that incumbent LECs deploy in their local networks.[12] VoIP service providers and their competitive LEC partners, in contrast, do not use TDM-based switches to terminate traffic. Thus, the ABC Plan proposal could be interpreted to mean that voice traffic that is terminated on a VoIP network is not covered by that reform plan.

To eliminate any possible ambiguity, a Commission Order reforming the ICC regime should make clear that an originating voice provider is obligated to pay the rate specified by the Commission for the termination of its traffic, during and after the transition, regardless of the technology of the terminating network and regardless of whether the traffic is ultimately delivered to the called location by the entity assessing the termination charge, such as when a competitive LEC partners with a VoIP provider.[13]

As noted above, the current system of intercarrier compensation has led to a variety of disputes, many of which remain pending. Therefore, the Commission should make clear that the rules adopted in this proceeding regarding VoIP traffic are prospective only. Specifically, the Commission should include an explicit statement that: (1) the intercarrier compensation rates

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[11] The Commission previously has made clear that competitive LECs that partner with VoIP providers are telecommunications carriers under the Act. *See Time Warner Order* ¶¶ 1, 19 (clarifying that wholesale telecommunications carriers, including competitive LECs, are entitled to interconnect and exchange traffic with incumbent LECs when providing services to other service providers, including VoIP providers, pursuant to sections 251(a) and (b) of the Communications Act).

[12] *See, e.g.,* ABC Plan at 11.

[13] *See, e.g.,* Letter from Matthew Polka, American Cable Association, and Michael Powell, National Cable & Telecommunications Association, to Chairman Genachowski, WC Docket 10-90, at 2 (Aug. 23, 2011).

applicable to originating and terminating interconnected VoIP traffic established in this Order shall apply on a prospective basis only; and (2) nothing in this Order shall affect the appropriate treatment of, or existing agreements in place for, originating and terminating interconnected VoIP traffic prior to the effective date of this Order.

B. The Commission's ICC Reform Plan Should Not Affect the Provision of Tandem Transit Services

The ABC Plan does not explicitly address the regulatory regime that would govern the provision of tandem switched services that deliver traffic to an end office owned by another entity, *i.e.,* tandem transit service, during and after the transition.[14] For Comcast and many other voice providers,[15] such tandem transit services provide the links that are essential to their ability to interconnect indirectly with rural, wireless, and other carriers.[16] Specifically, the traffic volumes that Comcast exchanges with those carriers do not justify establishing direct connections. Thus, Comcast and others must rely on connecting indirectly to those terminating carriers through tandem switches operated by incumbent LECs. Further, because competitive tandem switching facilities are not widely available, the incumbent LEC tandems are the only means of ensuring that Comcast will be able to terminate its traffic ubiquitously.

Comcast has reason to be concerned about the availability of tandem transit services at reasonable rates. Incumbent LECs in the past have asserted that such transit services are not

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14 The ABC Plan does make clear that post-transition the rate of $0.0007 would apply to the transport and termination of traffic within the tandem serving area. ABC Plan at 11.

15 The providers that rely on tandem transit services in this manner include rural LECs, competitive LECs, and CMRS providers.

16 In addition to sections 251(a) and 251(c)(2), the Commission also has jurisdiction over interstate transit services pursuant to section 201 of the Act. 47 U.S.C. §§ 201, 251(a) & (c)(2).

subject to the pro-competition provisions of section 251 of the Act.[17] Specifically, they have contended that sections 251(a) and 251(c)(2) refer only to the physical interconnection between two networks and not to the transport of traffic by an incumbent LEC to an unaffiliated carrier for termination.[18] Although federal courts and state commissions have rejected this claim,[19] the Commission to date has not addressed this issue.

Comcast previously has urged the Commission in this proceeding to eliminate uncertainty regarding the provision of transit services by affirming that such services are subject

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17 *See, e.g.,* AT&T Connecticut's Reply Brief on the Merits at 1-2, *Southern New England Tel. Co. v. Palermino*, No. 3:09-cv-1787 (D. Conn. Feb. 26, 2010) (arguing that there is nothing "in the Act or FCC rules or orders that requires incumbent [LECs], like AT&T Connecticut, to provide transit service as part of interconnection"); Comments of Century Link, WC Docket No. 10-90, at 76 (Apr. 18, 2011) (urging the FCC to find that transit service is not subject to sections 251 and 252 and transit service providers have no mandatory obligation to provide such service) ("CenturyLink Comments").

18 *See, e.g.,* Reply Comments of AT&T at 32-33 (claiming that the Commission has no warrant for subjecting transit services to the state arbitration scheme set up under section 251(c)(2) because that provision applies only to physical interconnection, and not to the routing of traffic, and that transit services are competitive and their rate levels should not be regulated).

19 *See Southern New England Tel. Co. v. Palermino*, No. 3:09-cv-1787, 2011 U.S. Dist. LEXIS 48773 at *12 (D. Conn. May 6, 2011) (concluding that "interconnection under section 251(c) includes the duties to provide indirect interconnection and to provide transit service"); *see also Qwest Corp. v. Cox Nebraska Telecom*, No. 4:08-cv-3035, 2008 U.S. Dist. LEXIS 102032 at *11 (D. Neb. Dec. 17, 2008) ("Based on the facts that Section 251 explicitly supports the availability of indirect interconnections, transit is critical to the availability of indirect interconnections, and Section 251(b)(5) does not apply to transiting carriers, the Court finds that an ILEC's interconnection obligations must include the duty to provide transit . . . ."); *Telcove Investment, LLC's Petition for Arbitration Pursuant to Section 252(b) of the Communications Act of 1934, as Amended by the Telecommunications Act of 1996, and Applicable State Laws for Rates, Terms, and Conditions of Interconnection with Southwestern Bell Telephone*, Docket No. 04-167-U, Order No. 10, Memorandum and Order, 2005 Ark. PUC LEXIS 338 at *58-*59 (Ark. PUC Sept. 15, 2005) (transit traffic is covered by section 251(c)).

to the section 251/252 negotiation and arbitration process.[20] At a minimum, the Commission should make clear that the changes adopted in this proceeding have no effect on the rates for or the regulatory treatment of tandem transit services under the Act. In Comcast's view, because incumbent LECs are required to offer tandem transit service pursuant to section 251(c)(2), the rates for such service must comply with the pricing standards of section 252(d)(1).

C. The Transition to a Uniform Low Rate for Terminating Voice Traffic Should Be Completed as Quickly as Possible

As explained in the *NPRM*, the nation's intercarrier compensation system is riddled with "fundamental inefficiencies" that have burdened carriers, consumers, and the Commission with "distorted incentives and wasted resources."[21] Specific problems like "phantom traffic" and "traffic pumping"[22] reflect the fundamental flaw in the current system: assessing different rates for transporting and terminating a call depending on the originating point of the call, the technology used, and the regulatory status of the carrier delivering the call.[23] As the *NPRM* correctly noted, "[t]he wildly varying and disparate rates within the intercarrier compensation system create arbitrage opportunities and introduce layers of regulatory complexity and associated costs, which hinder deployment of IP networks."[24]

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20 Comments of Comcast Corporation, WC Docket No. 05-337, at 28-30 (Nov. 26, 2008). *See also NPRM* ¶ 683 (inviting parties to "refresh the record with regard to the need for the Commission to regulate transiting service").

21 *NPRM* ¶¶ 7, 491.

22 *Id.* ¶ 7. Comcast has previously urged the Commission to: (1) curb phantom traffic by prohibiting providers from stripping relevant billing information from traffic they hand off to other providers; and (2) deter traffic pumping schemes that cost long distance providers millions of dollars in excessive charges annually and that impose undue costs on consumers. *See* Comments of Comcast Corporation, WC Docket No. 10-90 (Apr. 1, 2011).

23 *See NPRM* ¶¶ 494-496, 502.

24 *Id.* ¶ 496.

The Commission's prior reform efforts have been piecemeal and, as the Commission acknowledges, were not designed to address the "fundamental, ongoing shifts in technology, consumer behavior, and competition."[25] Consequently, the current compensation system continues to rely on a "patchwork of rates and regulations [that] is inefficient [and] wasteful."[26] Further, as the *NPRM* recognized, the current intercarrier compensation system affirmatively discourages carriers from upgrading from TDM technology to IP technology.[27] Indeed, the National Broadband Plan observed that the current regime encourages carriers to continue to invest in TDM technology in order to continue collecting access charges.[28]

The Commission's commitment to comprehensive reform of the existing intercarrier compensation system thus is encouraging. The Public Notice seeks comment on various components of the ABC Plan with regard to implementing a low, uniform default rate for voice traffic, including whether particular aspects of the plan would perpetuate incentives for arbitrage schemes.[29] The Public Notice also seeks comment on the appropriate length of the transition to a

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25 *Id.* ¶ 501; *see also id.* ¶ 501 n.718.

26 *Id.* ¶ 502.

27 *Id.* ¶ 506.

28 *See, e.g.,* FCC, *Connecting America: The National Broadband Plan*, at 142 (rel. March 16, 2010), *available at*: <http://download.broadband.gov/plan/national-broadband-plan.pdf> ("NBP" or "National Broadband Plan") ("Because providers' rates are above cost, the current system creates disincentives to migrate to all IP-based networks. For example, to retain ICC revenues, carriers may require an interconnecting carrier to convert [VoIP] calls to time-division multiplexing in order to collect intercarrier compensation revenue. While this may be in the short-term interest of a carrier seeking to retain ICC revenues, it actually hinders the transformation of America's networks for broadband.").

29 Public Notice at 1-2, 13.

uniform voice termination rate, and asks whether the Commission should establish transition periods of different lengths for different types of carriers.[30]

In view of the well-documented disruptions, anomalies, and economic inefficiencies caused by the current "patchwork" system of intercarrier compensation, the most desirable policy is to supplant the existing arrangements decisively and expeditiously. Comcast thus supports a brief transition to a uniform terminating rate for all providers – price cap and rate-of-return incumbent LECs as well as CMRS carriers and competitive LECs – that nonetheless is designed to avoid significant disruptions.[31] Under this approach, the termination rate for all TDM interstate and intrastate toll traffic as well as such TDM-exchanged traffic that originates or terminates in VoIP would be set in year one equal to the current applicable interstate access rate level.[32] The rate in year two would be set equal to the sum of the year one rate and the final termination rate, divided by two. Beginning in year three and thereafter, the rate would be set equal to the uniform default rate for terminating voice traffic of $0.0007.[33] In addition, the ABC

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[30] *Id*. at 13.

[31] If there are any exceptions to this timeline, those exceptions should apply only to rate-of-return incumbent LECs and should not extend the length of transition significantly. To the extent the FCC is concerned that this transition may be too disruptive for those smaller incumbents, it could permit them to establish their intrastate access rates in year one equal to the sum of their intrastate and interstate access charges divided by two. In year two, these carriers could then assess rates equal to their interstate access charges on all terminating traffic. This group of carriers could complete the transition in year three.

[32] Non-toll TDM traffic would continue to be governed by existing intercarrier compensation arrangements.

[33] The FCC's long-standing practice has been to treat an originating call that is billed to the called party, *e.g.,* toll-free calls, as the terminating end of the call. *Access Charge Reform; Price Cap Performance Review for Local Exchange Carriers; Transport Rate Structure and Pricing End User Common Line Charges*, First Report and Order, 12 FCC Rcd 15982, ¶ 366 (1997). Consistent with this practice, calls that are destined for a toll-free number should continue to be assessed the applicable "terminating" access charge pursuant to the transition plan.

Plan appears to exclude tandem switching and transport rates from the transition it proposes for terminating end office rates within the tandem serving area. Comcast supports the same transition glide path for all of these rate elements.[34]

Implementing these measures over the period proposed by Comcast would advance the Commission's objective of "avoid[ing] sudden changes or 'flash cuts'" in its policies.[35] At the same time, a shorter transition would establish an expeditious glide path to the "market-driven and incentive-based" regime that the Commission seeks.[36] In particular, accelerating the glide paths proposed by the ABC Plan and the rate-of-return carriers would more quickly "eliminate jurisdictional and regulatory distinctions that are not tied to economic or technical differences between services,"[37] thereby hastening the demise of regulatory arbitrage. For example, because all traffic that uses the same transport and termination functions in a provider's network would be subject to uniform rates, the proposed regime would eliminate the opportunity for one carrier to "game the system" by seeking to classify traffic incorrectly. Moreover, by more rapidly extinguishing the perverse incentive to invest in TDM technology, Comcast's proposal would

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[34] A key goal of the Commission's reform efforts is to lower unsustainably high intercarrier compensation rates to uniform, more economically efficient rates. There is no public interest consideration that would justify freezing transport and tandem switching rates while the end office switching rates are phased down. Hence, both rate elements should be reduced in the same phased steps that apply to termination rates.

[35] *NPRM* ¶ 12.

[36] *Id.* ¶ 10.

[37] *High-Cost Universal Service Support; Federal-State Joint Board on Universal Service; Lifeline and Link Up; Universal Service Contribution Methodology; Numbering Resource Optimization; Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Developing a Unified Intercarrier Compensation Regime; Intercarrier Compensation for ISP-Bound Traffic; IP-Enabled Services*, Order on Remand and Report and Order and Further Notice of Proposed Rulemaking, 24 FCC Rcd 6475, at Appendix A, ¶ 221 (2008) ("*2008 FNPRM*").

accelerate the transition from circuit-switched to IP networks, thereby helping to "make affordable broadband available to all Americans" sooner rather than later.[38]

D. Any Mechanism the Commission May Adopt to Offset a Carrier's Reduced Intercarrier Compensation Revenues Must Be Sharply Limited

In the Public Notice, the Commission seeks comment on the desirability of the ABC Plan's proposal to establish a "transitional access replacement mechanism" that includes "annual true-ups to adjust for possible increases or decreases in minutes of use" for price cap incumbent LECs that allegedly experience reduced intercarrier compensation as a result of the Commission's reforms.[39] The Commission should reject this or any similar "replacement" proposal.[40]

As Comcast and others have established in the record, there is simply no need to allow carriers, particularly price cap carriers, to recover lost revenues previously obtained from intercarrier compensation on a dollar-for-dollar basis.[41] The Commission's reform plan, therefore, should not include "true-ups" or other adjustments to account for minutes of use (and

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38 *NPRM* ¶ 10.

39 Public Notice at 14; *see also* ABC Plan at 12-13.

40 Comcast supports the Commission's proposal that rate-of-return carriers be provided a fixed percentage of recovery of all reduced terminating access charges "without true-ups to reflect changes in the revenue requirement historically used for interstate access charges." Public Notice at 14.

41 *See, e.g.,* Comments of Comcast Corporation, WC Docket No. 10-90, at 19-20 (Apr. 18, 2011) ("Comcast Comments"); Comments of Free Press, WC Docket No. 10-90, at 5-6 (Apr. 18, 2011) ("Free Press Comments"); Comments of Global Crossing North America, Inc., WC Docket No. 10-90, at 8 (Apr. 18, 2011); Comments of Time Warner Cable Inc., WC Docket No. 10-90, at 10-12 (Apr. 18, 2011) ("Time Warner Cable Comments"); Comments of Sprint Nextel Corporation, WC Docket No. 10-90, at 37-39 (Apr. 18, 2011) ("Sprint Comments"); Comments of Verizon and Verizon Wireless, WC Docket No. 10-90, at 19-21 (Apr. 18, 2011); Comments of New Jersey Board of Public Utilities, WC Docket No. 10-90, at 6 (Apr. 15, 2011); Reply Comments of T-Mobile USA, Inc., WC Docket No. 10-90, at 12-13 (May 23, 2011); Reply Comments of Verizon and Verizon Wireless, WC Docket No. 10-90, at 40-42 (May 23, 2011).

the associated revenues) lost to competitors. Such adjustments would undermine the Commission's commitment to market-driven policies by insulating the incumbent LECs – and only the incumbents – from the effects of the competitive marketplace. In addition, the proposed true-ups would be inconsistent with the Commission's commitment to fiscal responsibility. As the Commission aptly notes, "the true-up approach could result in the need for additional recovery, including additional federal universal service funding."[42] Thus, an excessive access recovery mechanism would impose a needless additional financial burden on consumers.

In the event that the Commission concludes that an interim mechanism for offsetting the loss of ICC revenues is necessary, a carrier's eligibility for such support should not be based on a dollar-for-dollar subsidy. Any such bailout would fundamentally distort the marketplace, contrary to the Commission's goal that its reforms be "market-driven and incentive-based."[43] Consistent with that objective, the Commission should not seek to replace revenues that an incumbent LEC has lost to a competitor offering a service that consumers find more attractive. Moreover, the Commission's assessment of a carrier's need for such interim funding should take into account the cost reductions the carrier has realized from reform of the ICC system. As NCTA has noted, "[a]ny calculation of access replacement funding should include any offsetting savings gained by the companies as a result of reform."[44]

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42 Public Notice at 14.

43 *NPRM* ¶ 10.

44 *Universal Service High-cost and Intercarrier Compensation Reform for a Competitive Broadband Marketplace*, attached to Letter from Steven F. Morris and Jennifer K. McKee, National Cable & Telecommunications Association, to Marlene H. Dortch, FCC Secretary, WC Docket No. 10-90, at 5 (July 29, 2011) ("NCTA Letter").

Further, as Comcast and others previously have proposed, if the Commission is inclined to adopt a replacement mechanism, it should take into account the carriers' regulated and non-regulated revenues as well as technological advances and the efficiencies that companies realize when they provide multiple services over a single network.[45] Including all revenues and efficiency gains in determining where support is actually needed will advance the Commission's goal of lowering the funding burden on consumers.

Some parties have argued that the Commission is barred as a matter of law from taking into account any unregulated revenues.[46] The decisions they cite in support of this claim, however, are inapposite. Contrary to the suggestions of the proponents of this argument, the Supreme Court's 1968 decision in the United Gas Pipe Line case upheld the authority of the Federal Power Commission to reduce rates based on the application of non-jurisdictional losses to jurisdictional income.[47] In effect, the decision permitted the regulatory agency to lower the revenues generated from regulated services based on tax savings from losses incurred in its non-regulated services. Further, their reliance on a more recent Michigan Bell decision is similarly unpersuasive.[48] As a threshold matter, the decision was issued in response to a motion

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[45] *See, e.g.,* Comcast Comments at 19; Comments of Cbeyond, Integra Telecom and TW Telecom, WC Docket No. 10-90, at 16-17 (Apr. 18, 2011); Comments of Coalition for Rational Universal Service and Intercarrier Reform, WC Docket No. 10-90, at 8 (Apr. 18, 2011); Comments of Coalition for Rational Universal Service and Intercarrier Reform, WC Docket No. 10-90, at 8-9 (Aug. 23, 2011); Comments of Florida Public Service Commission Comments, WC Docket No. 10-90, at 11-12 (Apr. 14, 2011); Free Press Comments at 7-8; Comments of Missouri Public Service Commission, WC Docket No. 10-90, at 23 (filed Apr. 6, 2011, dated Apr. 18, 2011); Sprint Comments at 35-36; Time Warner Cable Comments at 31-32.

[46] *See, e.g.,* Reply Comments of NECA, NTCA, OPASTCO, and WTA, WC Docket No. 10-90, at 27-32 (May 23, 2011) ("NECA *et al.* Reply Comments").

[47] *FPC v. United Gas Pipe Line Co.*, 386 U.S. 237, 245 (1967).

[48] *See Michigan Bell Tel. Co. v. Engler*, 257 F.3d 587 (6th Cir. 2001).

for a preliminary injunction. The case settled before the court reached a decision on the merits of the request for a permanent injunction. In addition, the statute at issue in that decision froze the incumbent LEC's local rates and effectively required it to recover any shortfall in regulated earnings by increasing rates for unregulated services. In this case, the plans submitted by the incumbent LECs would permit them to raise the rates they charge their end users. Revenues from unregulated services that use the same plant would be considered only in the context of determining whether customers of other carriers should provide a subsidy.

Although Congress has prohibited carriers from using revenues from regulated services to subsidize services that are competitive,[49] there is no Congressional or FCC prohibition against the Commission's consideration of unregulated revenues when determining the appropriate level of subsidies for regulated services. To the contrary, taking revenues from unregulated services into account when calculating the need for and amount of subsidies would advance the Commission's stated goal of fiscal responsibility by ensuring that support is targeted to the carriers and areas that actually need a subsidy.

Moreover, state commissions have taken into account revenues from unregulated services when determining the appropriate level of regulated rates. The New Hampshire Public Utilities Commission, for example, imputed revenues from an incumbent LEC's Yellow Pages product to offset the regulated entity's revenue requirement for ratemaking purposes.[50] Although rates for

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49 47 U.S.C. § 254(k).

50 *Investigation of Verizon New Hampshire's Treatment of Yellow Page Revenues*, DT 02-165; Order No. 24,345, 234 P.U.R.4th 353 (N.H. PUC 2004). The New Hampshire Supreme Court upheld this decision, noting that the New Hampshire PUC's imputation was a reasonable means of making ratepayers whole and that it was consistent with the public good. *Appeal of Verizon New England, Inc. d/b/a Verizon New Hampshire (New Hampshire PUC)*, 153 N.H. 50; 889 A.2d 1027 (N.H. 2005). The Supreme Court of Utah issued a similar opinion when it upheld

advertising in directory listings are deregulated, other states similarly have imputed revenues from directory advertising to a carrier's regulated revenues in order to reduce the revenues that must be recovered from consumers from the provision of regulated services.[51]

In an analogous context, the New York Public Service Commission took into account the value of certain of the regulated entity's assets to its unregulated operations. Specifically, the state commission imputed revenues to Rochester Telephone ("RTC") in the form of a two percent royalty from RTC's unregulated affiliates to compensate ratepayers for the transfer of intangible assets. On appeal, the reviewing court upheld the royalty, explaining that "[i]nsofar as the ratepayers have borne the costs for creating value in RTC's name and reputation, the ratepayers are entitled to a prudent use of those assets."[52] Similarly, the California Public Utilities Commission assesses "mark-ups" over and above the fully-loaded costs that are charged

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an order of the Utah Public Service Commission concerning the practice of imputing profits earned from directory publishing. *See US West Communications, Inc. v. Public Service Comm'n of Utah*, 2000 UT 1; 998 P.2d 247 (Utah 2000).

[51] *See, e.g., US West Communications, Inc. v. Utilities and Transportation Comm'n*, 134 Wn.2d 74, 96 & 99 n.8; 949 P.2d 1337, 1349 & 1350 n.8 (Wash. 1997) ("[t]hirteen of fifteen of US West's state regulatory jurisdictions" impute to US West revenues derived from its Yellow Pages affiliate). *See also North Carolina v. Southern Bell Tel. & Tel. Co.,* 307 N.C. 541, 544-545; 299 S.E.2d 763, 765 (N.C. 1983) ("We wish to point out that the yellow pages have never been and are not now regulated by the Utilities Commission. However, the fact that a specific activity of a utility is not regulated does not mean that the expenses and revenues from that activity cannot be included in determining the rate structure of the utility. . . . In addition to New Mexico, thirty states plus the District of Columbia include directory advertising revenues in ratemaking proceedings.") (citations omitted); *see also Southern New England Telephone, New York Telephone and Woodbury Telephone – Proposed Detariffing of Installation of Simple Inside Wiring and Maintenance of Simple and Complex Inside Wiring,* Docket No. 86-12-06, Decision, 1987 Conn. PUC LEXIS 106 (Conn. DPUC May 27, 1987).

[52] *Rochester Tel. Corp. v. Public Service Comm'n of the State of N.Y.*, 87 N.Y.2d 17, 29; 660 N.E.2d 1112, 1117 (N.Y. 1995) (citation omitted).

by the regulated LEC to its unregulated affiliate for use of the regulated entity's facilities and services.[53]

E. The Commission's Reform Plan Should Not Discourage States from Rebalancing Local Rates

While the Commission should sharply constrain any mechanism to offset a carrier's lost intercarrier compensation revenues, Comcast agrees that the FCC's reforms should not discourage states from implementing their own USF and ICC reforms (including rebalancing local rates), nor "punish" those states that have already begun to undertake such reforms. For example, the Commission questions whether the initial consumer monthly rate for calculating access recovery should be taken as a "snapshot in time as of January 1, 2012," or whether "the rate used to determine access recovery [should] be the 'higher of' (1) the rate as of January 2012 and (2) the rate at future points before annual access recovery amounts" are established.[54] Taking a "snapshot" on January 1, 2012 would remove any incentive states may have to rebalance local rates. Only by adopting the latter option would the Commission avoid deterring necessary state reforms.

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[53] *Order Instituting Rulemaking on the Commission's Own Motion to Develop Standard Rules and Procedures for Regulated Water and Sewer Utilities Governing Affiliate Transactions and the Use of Regulated Assets for Non-Tariffed Utility Services (formerly called Excess Capacity)*, Rulemaking 09-04-012, Decision 10-10-019, Decision Adopting Standard Rules and Procedures for Class A and B Water and Sewer Utilities Governing Affiliate Transactions and the Use of Regulated Assets for Non-tariffed Utility Services, 2010 Cal. PUC LEXIS 400, *90-91 (Cal. PUC Oct. 14, 2010) (explaining the mark-up as a recognition that Pacific Bell's affiliates benefit from the "embedded value of PacBell's talent and expertise, developed and refined over the years as a result of reimbursement by PacBell's ratepayers").

[54] Public Notice at 11.

F. If an Identification System for VoIP Traffic Is Necessary, Parties Should Be Required to Certify the Percentage of Their Relevant Voice Traffic that Originates in IP

Under the ABC Plan, VoIP access traffic would be subject to intercarrier compensation rates different from the rates applied to other access traffic during the first part of the transition.[55] Accordingly, the Commission seeks comment in the Public Notice on how "VoIP traffic subject to the ICC framework [would] be identified for purposes of the proposed tariffing regime."[56]

As a threshold matter, the Commission can avoid this issue by adopting Comcast's proposal that would assess the same rate on all traffic exchanged in TDM, regardless of the protocol in which it is terminated, as interstate access traffic. If the Commission adopted a plan that rated end-to-end TDM traffic differently from traffic that is exchanged in TDM but originated in VoIP, one administratively feasible approach to identifying the technological origins of traffic would be to require parties to certify the percentage of their relevant voice traffic that originates in IP.[57] This approach would be similar to the manner in which providers currently identify their volumes of jurisdictional long distance traffic by providing percentage interstate usage ("PIU") and percentage local usage ("PLU") factors to terminating carriers. To encourage reliable reporting, the Commission should require providers to certify to the accuracy of the factors they supply for VoIP-originated traffic and make their records available for

55 ABC Plan at 10.

56 Public Notice at 17.

57 Under the ABC Plan, the primary area of concern for traffic format identification is intrastate toll, where VoIP-originated traffic would be assessed a potentially different access rate (interstate access) than TDM-originated traffic (intrastate access). Thus, if the ABC Plan were adopted, parties would certify the percentage of their originating intrastate toll voice traffic that originates in IP.

auditing. The Commission also should vigorously enforce penalties for submitting false information.

III. UNIVERSAL SERVICE FUND REFORMS

The universal service reform proceeding offers the Commission an opportunity to replace the current inefficient, anti-competitive system with a sustainable, pro-competitive plan that increases consumer benefits. To that end, Comcast urges the Commission to modify the proposals under consideration by: (1) imposing a firm enforceable cap on the size of the Fund; (2) implementing other measures that limit the Fund's size; (3) employing a reverse auction; (4) using a well-designed cost model; (5) subjecting support recipients to build-out milestone obligations; and (6) awarding support in a technologically neutral fashion.

A. The Size of the Fund Must Be Capped

The Commission seeks comment on "implementing reform within a defined budget."[58] The "defined budget" proposed by the incumbent LECs, however, includes several provisions that would allow the Fund size to increase above current levels or delay long overdue reductions in intercarrier compensation. The Joint Letter, for example, proposes that scheduled reductions in intercarrier compensation rates be suspended in any year in which universal support payments may not reach expected levels.[59] In other words, the paramount concern of the incumbents is to preserve their revenue streams, without regard to the impact on consumers who bear the costs.

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[58] Public Notice at 9.

[59] Letter from Walter B. McCormick, Jr., United States Telecom Association, Robert W. Quinn, Jr., AT&T, Melissa Newman, CenturyLink, Michael T. Skrivan, FairPoint, Kathleen Q. Abernathy, Frontier, Kathleen Grillo, Verizon, Michael D. Rhoda, Windstream, Shirley Bloomfield, NTCA, John Rose, OPASTCO, and Kelly Worthington, WTA, to Chairman Julius Genachowski, Commissioner Michael J. Copps, Commissioner Robert M. McDowell, and Commissioner Mignon Clyburn, FCC, WC Docket No. 10-90, at 2-3 (July 29, 2011) ("Joint Letter").

Fiscal responsibility requires that the Commission impose a fixed spending limit by capping "the sum of the [Connect America Fund ("CAF")] and any existing high-cost programs (however modified . . .) in a given year" at the size of the high-cost program in 2010, as the National Broadband Plan recommended.[60] The Commission recognized that the ongoing growth in the Fund's size has "threaten[ed] the specificity, predictability, and sustainability of the fund."[61] A firm cap on expenditures from the Fund is essential to prevent the "contribution burden [from] undermin[ing] the benefits of the program by discouraging adoption" and to ensure the stability of the high-cost support program in the future.[62] The National Broadband Plan underscored the same concerns.[63] All recipients from the Fund, price cap as well as rate-of-return carriers, need to be subject to a firm constraint.

As NCTA has explained, the Commission's funding decisions should focus on maximizing consumer benefits, not on ensuring incumbent LEC revenue streams.[64] Indeed, the

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60 *NPRM* ¶ 414. *See also* NBP at 149 (recommending that the Commission "manage the total size of the USF to remain close to its current size (in 2010 dollars) in order to minimize the burden of increasing universal service contributions on consumers").

61 *High-Cost Universal Service Support; Federal-State Joint Board on Universal Service*, Order, 23 FCC Rcd 8834, ¶ 9 (2008); *see also id*. ¶¶ 5-6.

62 *NPRM* ¶ 10. *See also* NCTA Letter at 2 (urging the FCC to cap total high-cost funding at $4.5 billion per year and to find alternative, less costly means of providing broadband to extremely high-cost households).

63 NBP at 149-150.

64 NCTA Letter at 2. *See also* Joint Comments of Satellite Broadband Providers, WC Docket No. 10-90, at 3 (Apr. 18, 2011) ("Ultimately, consumers pay for the USF. Every effort to subsidize service for one customer raises prices for another. Universal service therefore should be provided in the most economical way possible."); Reply Comments of XO Communications, WC Docket No. 10-90, at 20-22 (May 23, 2011) (noting that "[i]nitial comments showed broad support for the notion that CAF funding should be capped" and that, "[w]hile capping high cost funding is a starting point, the Commission should make clear that it expects such funding to decrease over time as broadband is successfully deployed") ("XO Reply Comments").

Commission has an affirmative legal obligation to limit support. The U.S. Court of Appeals for the D.C. Circuit recently held that, in balancing "the risks of excessive subsidization," the Commission "must consider not only the possibility of pricing some customers out of the market altogether, but the need to limit the burden on customers who continue to maintain telephone service."[65]

B. Additional Measures Should Be Implemented to Target Support Where It Is Needed and to Constrain the Fund's Size

Consistent with the ABC Plan and the prior comments of NCTA and Comcast in this proceeding,[66] the Commission should eliminate broadband support from the CAF in any geographic area where an unsubsidized, facilities-based provider is offering broadband service.[67] In keeping with the recommendations set forth in the National Broadband Plan, the "CAF should only provide funding in geographic areas where there is no private sector business case to provide broadband and high-quality voice-grade service."[68]

Further, the FCC should bar a broadband support recipient from using funding to subsidize its service in areas where it faces competition from an unsubsidized, facilities-based provider.[69] Specifically, the use of support must be confined to those rural areas that are

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65 *Rural Cellular Association v. FCC*, 588 F.3d 1095, 1102 (D.C. Cir. 2009). *See also Qwest Communications Int'l v. FCC*, 398 F.3d 1222, 1234 (10th Cir. 2005) (noting that "excessive subsidization arguably may affect the affordability of telecommunications services [for unsubsidized areas], thus violating the principle in § 254(b)(1)").

66 Comments of National Cable & Telecommunications Association, WC Docket No. 10-90, at 10 (Apr. 18, 2011) (noting that "it is important for the Commission to . . . assign high-cost support to areas without an unsubsidized competitor") ("NCTA Comments"); Comcast Comments at 22; ABC Plan at 3.

67 Public Notice at 6-7.

68 NBP at 145.

69 Public Notice at 10.

unserved today and would remain unserved by broadband service in the absence of universal service subsidies.

The Commission also should eliminate or reduce significantly several existing high-cost narrowband subsidies in order to ease the burden of the Fund on consumers. First, high-cost loop support should be reduced. Under the current inequitable regime, even if an incumbent LEC loses lines to a competitor, the incumbent continues to receive the same total amount of support, thereby insulating the incumbent from competitive pressures. Second, local switching support should be eliminated, because, as the FCC has recognized, this support mechanism does not "appropriately target funding to high-cost areas, nor does it target funding to areas that are unserved with broadband."[70] Third, interstate access support is no longer necessary to ensure the continued provision of legacy services to high-cost areas and, consequently, should be eliminated. Fourth, high cost support for competitive eligible telecommunications carriers ("ETCs") should be phased out. As noted in the National Broadband Plan, "[i]n some areas today, the USF supports more than a dozen competitive ETCs that provide voice service, and in many instances, companies receive support for multiple handsets on a single family plan."[71]

Finally, the Commission may want to impose a cap on the total amount of high-cost support that a carrier is eligible to receive for each line in a wire center.[72] As explained below, a properly designed reverse auction would render a cap unnecessary since the lowest-cost technology provider would be the service provider. To the extent a reverse auction is not used,

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70 *NPRM* ¶ 190.

71 NBP at 148.

72 Public Notice at 10.

however, a cap would be "consistent with fiscally responsible universal service reform."[73] Moreover, in order to maximize fiscal responsibility and consumer benefits, the Commission should consider a lower cap amount than $250 based on a cost model or "some other reasonable, objective measure."[74]

C. A Reverse Auction Is the Preferred Method to Award CAF Support

The record in this proceeding establishes that, in all geographic areas where there would be competitive bidders, a reverse auction is both the most economically efficient mechanism for awarding CAF support as well as the approach that will best advance the Commission's statutory obligations and policy principles.[75] A reverse auction would further the statutory goal of sustainability by targeting support to providers that will build out broadband networks in unserved areas at the lowest cost. A reverse auction further would promote the FCC's goal of extending broadband to the greatest number of Americans in a fiscally responsible manner. Indeed, a reverse auction should be used to identify winners and target subsidies for broadband for the same reason that reverse auctions are used by the government for procurement of many goods and services.

The analysis contained in the Broadband Availability Gap Model ("BAGM") provides powerful evidence that a reverse auction could improve the efficiency of subsidies substantially. Fixed wireless service and satellite service were demonstrated to be much less costly than

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[73] *NPRM* ¶ 210. *See also* NCTA Comments at 13 (finding that adopting a per-line limit on high-cost support would "ensure that high-cost funds are used as efficiently as possible").

[74] Comments of T-Mobile USA, Inc., WC Docket No. 10-90, at 13 (Apr. 18, 2011) ("T-Mobile Comments").

[75] *See, e.g.,* Comments of COMPTEL, WC Docket No. 10-90, at 31 (Apr. 18, 2011); NCTA Comments at 9; Sprint Comments at 41; Time Warner Cable Comments at 26-27; XO Reply Comments at 24.

traditional wireline technologies to extend broadband service to unserved parts of the country. For example, the BAGM determined that using satellite service to reach the 250,000 most expensive households in the country would reduce the revenue "gap" over the life of the facilities from $24 billion to $10 billion.[76] The model also found that approximately 90 percent of unserved households are most efficiently served with wireless.[77] These findings demonstrate that reverse auctions have the potential for saving billions of dollars by awarding subsidies to the firms that utilize the most efficient and suitable technology to extend broadband to unserved areas. This is the essence of fiscal responsibility.

The proper implementation of reverse auctions would entail several steps. First, the Commission would need to determine the geographic areas that are unserved. The second step would be to designate the dimensions of the geographic areas over which bidding would take place. The third step would be to design the protocols and practices to be used in the auction.[78]

Subsidies clearly are not needed to support broadband service in areas where marketplace forces will provide adequate incentives to construct broadband facilities. Hence, the first step in developing a viable reverse auction plan is to identify the geographic areas where marketplace incentives will not lead to the deployment of broadband.

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[76] FCC, *The Broadband Availability Gap: Omnibus Broadband Initiative Technical Paper No. 1*, at 5, 89 (2010), *available at*: <http://download.broadband.gov/plan/the-broadband-availability-gap-obi-technical-paper-no-1.pdf> ("Broadband Availability Gap Paper").

[77] *Id.* at 13.

[78] Concerns about whether an auction winner's incentives to provide high quality service can be addressed by specifying a complete set of service quality criteria that must be met by the winner of the auction, such as the minimum upload and download speeds, the reliability of service, and even the price of a basic tier of broadband service. This is no different from any procurement auction that requires clear performance specifications.

With respect to the second step, census blocks should be used to determine the geographic areas over which the bidding will take place. A census block is the smallest geographic unit for which the Census Bureau provides publicly available demographic data.[79] Therefore, all potential bidders would have access to the same information on the geographic areas open for auction. So long as there is a mechanism in place to enable parties to submit bids for any combination of census blocks, there is no reason to use any larger unit of geography for the reverse auction. Potential providers would be able to bid according to the design of their networks and account for firm-specific economies of scope and scale.[80] Consequently, the bid price for the combination of census blocks would likely be lower than the sum of the bids for the individual census blocks.

Alternative proposals to use larger geographic areas would limit the benefits of a reverse auction. In particular, the proposal to use wire center boundaries for the reverse auction would give the incumbent LECs a substantial advantage compared to other bidders whose network (or potential build out) would not overlap with these boundaries. Forcing these other bidders to serve the identical serving area could foreclose an optimal outcome whereby the incumbent LEC

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[79] The Census Bureau provides maps of all census blocks showing geographic features such as roads, railroads, and hydrology, and a geographic tabulation showing the correspondence of census blocks to numerous other geographic entities, such as counties, minor civil divisions ("MCDs"), census county divisions ("CCDs"), and federal and state American Indian reservations. U.S. Census Bureau, *2010 Census – Census Block Maps*, *available at*: <http://www.census.gov/geo/www/maps/DC10_GUBlkMap/dc10blk_main.html> (viewed Aug. 24, 2011).

[80] An interested party would be able to submit a bid for more than one census block in addition to (or alternatively to) a bid made for each census block. The bidding software would find the combination of bids that minimized the level of subsidy needed to support build-out in all areas up for bid.

would extend broadband facilities efficiently to part of its serving territory, but not to other parts where its technology was not suitable and a competitor would be more efficient.

D. The ABC Plan's Proposed Right of First Refusal Should Be Rejected

The ABC Plan's proposal to give incumbent LECs a right of first refusal to obtain CAF support in the vast majority of unserved areas is plainly contrary to the public interest.[81] While the incumbent LECs argue that this proposal will "avoid the inefficient duplication of facilities," the reality is that the proposal would simply give incumbent LECs an unwarranted advantage in receiving CAF support. The proposal also would increase the size of subsidies needed to support broadband in unserved areas, thereby unnecessarily increasing the financial burden on consumers.

As discussed above, the Broadband Availability Gap Model demonstrates that satellite and fixed wireless technologies are likely to be a much less costly means of providing broadband to many unserved areas. It would be foolhardy to forego this potential cost savings to a right of first refusal.[82] The ABC Plan's sponsors recognize that using satellite technology effectively could reduce the potential size of the subsidy enormously. Nevertheless, the ABC Plan does not

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[81] ABC Plan at 6 (proposing to give an incumbent LEC the opportunity to accept or decline support in a wire center if the incumbent LEC has already made high-speed Internet service available to more than 35 percent of the service locations in the wire center). *See also id*. (estimating that incumbent LECs would "have the opportunity to accept or decline CAF support in 82.0 percent of the census blocks that are eligible for CAF support").

[82] On a head-to-head basis, wireless is cheaper than 12,000 foot loop DSL in 85 percent of the number of counties, 58 percent of the geographic area in supported counties, and 90 percent of unserved households. Broadband Availability Gap Paper at 13. On an aggregate basis, if only one technology – wireline or wireless – were used to serve all unserved households, wireless would be 30 percent cheaper than wireline. Transcript of The Broadband Availability Gap Workshop at 34 (May 6, 2010), *available at*: <http://www.broadband.gov/docs/ws_broadband_availability_gap/050610-FCC.pdf> (showing a gap of approximately $13 billion for wireless only and $18.6 billion for wireline only).

include a mechanism, such as a reverse auction for all unserved census blocks, for choosing the best technological solution in each area. Assume, for example, that fixed wireless can serve part of the serving area more cost-effectively than wireline or satellite, but satellite would be the least expensive technology in another part of the serving area. In that event, the selection of the most efficient provider requires a three-way cost comparison, rather than simply a two-way comparison between wireline and satellite (as the ABC Plan appears to propose). Granting the incumbent LECs a right of first refusal would likely lead to subsidization of the wrong technology.

Moreover, the argument that granting a right of first refusal is necessary in order to take advantage of the incumbent LECs' sunk broadband investment appears flatly inconsistent with the prior advocacy of many incumbent LECs. Specifically, rural incumbent LECs have frequently claimed that competition has eroded the revenues they can generate from more densely populated sectors of their service territories.[83] Consequently, they contended that the lower cost of serving those denser areas "does not ameliorate the cost of deploying telecommunications services or broadband in rural areas."[84] Hence, they argued, support should be calculated on a highly disaggregated basis. Proponents of the ABC Plan, in contrast, now assert that the fact that an incumbent LEC already serves 35 percent or more of the customer locations in a wire center makes it the most efficient choice to serve more sparsely populated

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83 *See, e.g.*, Comments of the Independent Telephone & Telecommunications Alliance, WC Docket No. 10-90, at 5 (Apr. 18, 2011) ("new entrants, who do not have carrier-of-last-resort ("COLR") obligations, typically win urban customers from incumbent providers, leaving fewer low-cost (*i.e.*, urban) customers to support those served by incumbents in the higher-cost (*i.e.*, rural) areas."); *see also* NECA *et al.* Reply Comments at 33 (explaining that competitors typically serve only the most densely populated/lowest-cost portion of a high-cost area).

84 Comments of Embarq, WC Docket No. 05-337, at 7 (May 31, 2007).

locations served by the same wire center. Further, if incumbent LECs face broadband competition in more densely populated rural areas, proponents of the ABC Plan offer no explanation as to why those competitors would not be able to exploit the same economies and extend service to the less densely populated areas just as easily as the incumbent LEC.

The harm caused by adoption of the "right of first refusal" proposal would be far reaching because the incumbent LECs will likely satisfy the 35 percent coverage requirement in most wire centers. The proponents of the ABC Plan themselves estimate that "incumbent LECs would have the opportunity to accept or decline CAF support in 82.0 percent of the census blocks that are eligible for CAF support, representing 82.2 percent of the $2.2 billion in support targeted to areas served by price cap LECs."[85]

Finally, to the extent that an incumbent LEC has already deployed broadband facilities in a particular area, the cost advantage those facilities give it in providing additional locations in the same area should be reflected in the incumbent LEC's reverse auction bid. The Commission's focus in these proceedings should be on permitting the competitive bidding process to determine the firm that can build out a broadband network most efficiently.

E. A Well-Designed Cost Model Would Be a Useful Adjunct to the Reverse Auction Process

A properly designed economic model can be a very useful component of a subsidy program for broadband. First, a model can be used as a screening device to identify areas that should not require a subsidy. This may even include areas that are not currently passed by broadband facilities, but which are likely to become self-sustaining in the near term. The results

85 ABC Plan at 6 n.7.

of the model can be used to identify where the subsidies should be targeted and also help establish priorities for subsidies.

Second, a cost model will play an essential role where the reverse auction is unlikely to control the level of subsidy effectively. In certain geographic areas, there may be no bidders other than the incumbent LEC. This could be caused by a number of factors, including the cost of propagating wireless signals in hilly terrain or the lack of suitable spectrum in other locations. In these cases, a cost model would be necessary to determine the appropriate level of support for the incumbent LEC.

Finally, a cost model also could be used to set a reserve price, *i.e.* the maximum subsidy that the fund would pay to the provider of broadband service in a particular geographic area, even if one or more firms enter an auction along with the incumbent LEC. The reserve price would limit the size of the subsidy where one bidder has much lower costs than the other potential bidders.[86] A reserve price must be set taking into consideration the uncertain knowledge of the cost of service, the expected cost difference between competing technologies, and expectations about the likely number of bidders in the auction.

Any cost model used for these purposes, however, must be made available to the public for review and comment prior to being adopted by the Commission. Proponents of the ABC Plan only recently provided input data used for one of the scenarios run by the CostQuest Model. By itself, this information is of limited value, as it does not explain or document the algorithms, estimation procedures, or most of the underlying data used to generate results. Further, unless

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[86] For example, if the forward-looking cost of the least-cost bidder is $100 per month per subscriber and the forward-looking cost of the second to the least-cost bidder is $500 per line, the auction would not constrain effectively the size of the subsidy to the least-cost firm. That firm could win the auction with a bid of $499 per line, and garner excess profits of $399 per line.

the model can be run by other parties, it will not be possible to test sensitivity to input assumptions and choices of modeling techniques. Typically, cost modeling requires many judgment calls that must be brought to light and tested for reasonableness. The following is a sample of issues raised by our review to date of the CostQuest Model summary:

- Whether modeling techniques may be yielding significantly higher costs for smaller incumbent LECs.[87] Although smaller incumbent LECs may not be able to take advantage of the same scale economies as large incumbent LECs, there is a limit to the size of the cost penalty that ratepayers should be required to subsidize.
- How the model handles differences between the operating costs of new broadband technology and older TDM technology. This is especially important if the model utilizes historic incumbent LEC data on operating costs.[88]
- How the model allocates costs across different services (*e.g.*, business, residential) using the same facilities.[89]
- What data is available on the operating costs and characteristics of incumbent LECs now that ARMIS reporting requirements have been significantly scaled back.[90]
- How structure sharing percentages are developed, and how costs are allocated for facilities (*e.g.* poles) owned by electric utilities.[91]
- What marketing costs should be included in the cost estimates. The CostQuest model appears to include marketing costs that are 12.8 to 12.97 percent of total revenue.[92]

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87 ABC Plan at Attachment 3, Section 3.3.d.1.

88 *Id.*

89 *See id.* at Section 3.2.d.2 (referring to "appropriate attribution" and "appropriate economic rationale").

90 *See e.g., id.* at Section 3.3.d.1 (referring to "financial data provided by the CQBAT company Coalition members").

91 *See id.* at Section 3.2.d (referring to "sizing and sharing of network components").

92 *Id.* at Section 3.3.d.3.

F. Recipients of CAF Support Should Be Subject to Public Interest Obligations Such as Build-Out Milestones

The State Members of the Federal State Joint Board on Universal Service have proposed that recipients of CAF support "meet specific broadband build-out milestones at years 1, 3 and 5 of deployment."[93] Comcast supports the adoption of build-out milestones, because they would be consistent with the Commission's goal of "ensur[ing that] public funds are being used effectively."[94] Moreover, build-out milestones have received broad support in the record.[95] As Time Warner Cable has noted, "it is appropriate for the Commission to impose service, coverage, and deployment requirements that will ensure that funding awards are used to maximize broadband availability within a designated area."[96]

The Commission also should emphasize the seriousness of its build-out obligations by making clear that subsidy payments for broadband build-outs will automatically be suspended for any recipient that fails to meet any milestone. As the Commission has noted, "a rigorous monitoring, compliance and enforcement program is necessary to ensure [that supported providers] adhere to their obligation to offer . . . service throughout their supported service areas by the end of their respective build-out periods."[97] In the past, the Commission has taken similar measures when allocating universal service support, requiring entities designated as ETCs to file

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93 Public Notice at 4; State Members Plan at 62-63.

94 *NPRM* ¶ 135.

95 *See, e.g.,* Comments of AT&T Inc., WC Docket No. 10-90, at 105-106 (Apr. 18, 2011); CenturyLink Comments at 23-24; Comments of the Nebraska Public Service Commission, WC Docket No. 10-90, at 14-15 (Apr. 18, 2011).

96 Time Warner Cable Comments at 27.

97 *2008 FNPRM* ¶ 57.

a five-year network improvement plan and then an annual report thereafter that covers build-out progress, outages, service requests, and complaints.[98]

G. CAF Awards Should Be Technologically Neutral

The Commission must ensure that CAF support is awarded in a technologically neutral fashion, with the exception of the highest cost areas to serve. The National Broadband Plan underscored the importance of this criterion by recommending that "[s]upport should be available to both incumbent and competitive telephone companies . . . , fixed and mobile wireless providers, satellite providers and other broadband providers."[99] Thus, CAF support generally should go to the lowest-cost provider, irrespective of technology. As Frontier aptly noted, "once the Commission has made a determination that certain characteristics and obligations are necessary to meet the needs of the American public, and a carrier accepts funding to provide these characteristics, it should not matter . . . what technology is used to meet them."[100]

Technological neutrality in funding decisions would eliminate any need to establish separate funding mechanisms based on technological differences. For example, there would be no need for a separate fund earmarked for mobile broadband providers. Those providers should receive support from the CAF in any area in which they would be the most efficient provider of broadband services.[101] Moreover, permitting parties from different industry segments to

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98 47 C.F.R. § 54.209.

99 NBP at 145.

100 Comments of Frontier Communications, WC Docket No. 10-90, at 22 (Apr. 18, 2011).

101 If the FCC chooses to provide a separate support mechanism for mobile broadband, this support should count toward the $4.5 billion dollar cap for all high-cost support. NCTA Letter at 2.

participate via a single funding mechanism would more closely mimic the workings of a competitive marketplace and ensure adherence to the Commission's guiding principles.[102] As T-Mobile has observed, "[a]ny . . . preference [for a certain class of providers in the allocation of CAF support] would result in a fund that is larger than the current federal high-cost USF (as well as violate the principles of competitive and technological neutrality)."[103]

Comcast, however, agrees with the ABC Plan that the Commission should establish an "alternative technology threshold" in order to identify the most costly census block areas to serve.[104] Areas with costs above the threshold should be excluded from the calculation of the baseline support available from the CAF.[105] Instead, those areas should be served by satellite broadband providers, in keeping with the National Broadband Plan recommendation that "[t]he FCC should consider alternative approaches, such as satellite broadband, for addressing the most costly areas of the country to minimize the contribution burden on consumers across America."[106]

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102 *See, e.g, Federal-State Joint Board on Universal Service*, Report and Order, 12 FCC Rcd 8776, ¶ 47 (1997) (defining the principle of competitive neutrality, which requires that "universal service support mechanisms and rules neither unfairly advantage nor disadvantage one provider over another, and neither unfairly favor nor disfavor one technology over another").

103 T-Mobile Comments at 9.

104 *See* Public Notice at 8.

105 Alternatively, if a reverse auction is properly structured, then the lowest cost technology, *i.e.,* satellite in the most rural areas, will likely provide serve to these customers at a cost much below the threshold.

106 NBP at 150.

IV. CONCLUSION

The Commission should adopt a comprehensive plan for intercarrier compensation and high-cost universal service reform that is consistent with the foregoing proposals and comments and, consequently, consistent with the Commission's reform principles.

Respectfully submitted,

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Certificate of Service

I, Ruth E. Holder, hereby certify that on this 24th day of August, 2011, I caused true and correct copies of the foregoing Comments of Comcast Corporation to be mailed by electronic mail addressed to:

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